REMARKS

This Amendment is submitted in reply to the Office Action mailed on September 22, 2003. In the Office Action, the Examiner maintained that the previously asserted election requirement was proper and made the election requirement final. Consequently, the Examiner asserted that claims 6-12 are withdrawn from consideration in the present application as allegedly being directed to a non-elected invention. Also, in the Office Action, the Examiner rejected claims 1-5. With this Amendment, no claims are amended, withdrawn claims 6-12 are canceled, and new claims 13-40 are added. Upon entry of this Amendment, the above-identified application will include claims 1-5 and 13-40.

Examiner's Comment About Priority

In the Office Action, the Examiner requested that the current status of all referenced non-provisional parent applications be included in the present application. Applicants have amended the specification of the above-identified application, as indicated above, to include the current status of the parent application to the above-identified application. This amendment is believed to adequately address the Examiner's comments about inclusion of the current status of all referenced non-provisional parent applications.

Examiner's Objection to the Abstract

In the Office Action, the Examiner objected to the Abstract of the disclosure on the basis that the originally-filed Abstract was longer than 150 words. Applicants have amended the Abstract, as indicated above, such that the Abstract is now within the suggested range of 50 to 150 words. This amendment is believed to adequately address the Examiner's objection to the Abstract. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the objection to the Abstract.

Claim Rejections Based On Obviousness-Type (Judicially-Created Doctrine) Double Patenting

In the Office Action, the Examiner rejected claims 1-5 under the non-statutory, judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-12 of U.S. Patent No. 6,277,592. In response to this rejection, Applicants are filing an executed Terminal Disclaimer under 37 CFR § 1.321(c) along with this Amendment. Applicants believe filing of this Terminal Disclaimer adequately addresses the Examiner's rejection of claims 1-5 under the judicially created doctrine of obviousness-type double patenting. Therefore, Applicants respectfully request that the Examiner enter the Terminal Disclaimer and further request that the Examiner reconsider and withdraw the rejection of claims 1-5 under the non-statutory, judicially created doctrine of obviousness-type double patenting based on claims 1-12 of U.S. Patent No. 6,277,592.

Claim Rejections Under the First Paragraph of 35 U.S.C. §112

In the Office Action, the Examiner rejected claims 1-5 of the above-identified application under the first paragraph of 35 U.S.C. §112 for allegedly failing to provide an adequate written description. In support of this rejection, the Examiner stated:

> Claims 1-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
>
> In so far as the instant claims are directed to allelic variants of SEQ ID NO:1, the specification lacks an adequate written description of this subject matter. The recitation of 'allelic variant' is directed to a specific molecule for which the instant specification fails to describe the molecule in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The structure of an 'allelic variant' cannot be predicated on the basis of the nucleotide sequence of SEQ ID NO:1 since there is no disclosure of where the variation occurs in the sequence of SEQ ID NO:1. The claims are

directed to a species of nucleic acid, the structure of which cannot be determined or predicted from the disclosed nucleic acid sequence and the specification does not evidence isolation or conception of the structure of an 'allelic variant', therefore the specification does not provide an adequate written description of the claimed subject matter, and thus the claimed invention, to the extent that it reads upon an 'allelic variant' was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Vas-Cath Inc. v. Mahurkar, 19 USPQ2d 1111, makes clear that, 'applicant must convey with reasonable clarity to those skilled in the art that as of the filing date sought, he or she was in possession of the invention. The invention is for purposes of the written description inquiry, whatever is now claimed.' (See Vas-Cath at page 1116.)

With the exception of very particular nucleic acid sequence which is disclosed in the instant application, the skilled artisan cannot envision the detailed chemical structure of the encompassed nucleic acid molecules and therefore conception is not achieved until reduction to practice has occurred, regardless of the complexity or simplicity of the method of isolation. Adequate written description requires more than a mere statement that it is part of the invention and reference to a potential method for isolating it. The specific molecular structure is required. See Fiers v. Revel, 25 USPQ2d 1601, 1606 (CAFC 1993) and Amgen Inc. v. Chugai Pharmaceutical Co. Ltd. 18 USPQ2d 1016.

One cannot describe what one has not conceived. See Fiddes v. Baird, 30 USPQ2d 1481, 1483. In Fiddes vs Baird, claims directed to mammalian FGF's were found unpatentable due to lack of written description for the broad class. The specification provided only the bovine sequence. Applicant is reminded that Vas-Cath makes clear that the written description provision of 35 USC 112 is severable from its enablement provision (See page 1115). The instant claims are directed to a structure, which could be isolated, but for which, there is no written description. As in Fiddes v. Baird, claims directed to mammalian FGF's were found unpatentable due to lack of written description for the broad class because the specification provided only

> the bovine sequence. In the instant situation, the specification only provides a single nucleic acid sequence, but fails to provide a description of the "broad class" of allelic variants, regardless of whether they could be made or isolated.

The above-identified application is a continuation-in-part application based on, and claiming the priority of, U.S. patent application no. 08/692,922, which is also referred to herein as "parent application no. 08/692,922." The Examiner made no distinction between the specification of the above-identified application and the specification of parent application no. 08/692,922 when stating the present written description rejection. Nonetheless, and despite the Examiner's above-recited comments, the written description of the invention contained in parent application no. 08/692,922 is adequate to support the recited "allelic variant" terminology, as defined in claims 1-5. The written description contained in parent application no. 08/692,922 reasonably conveys to one skilled in the relevant art that the inventor, at the time parent application no. 08/692,922 was filed, had possession of the invention, as defined in claims 1-5 of the above-identified application.

In subsequent comments, references to parent application no. 08/692,922 are made with respect to U.S. Patent No. 6,277,592, which issued from parent application no. 08/692,922. A copy of U.S. Patent No. 6,277,592 is attached as Exhibit A; U.S. Patent No. 6,277,592 is also referred to herein as the "Bidwell patent."

The written description requirement of the first paragraph of §112 reads as follows:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The test for compliance with the written description requirement is well settled:

> The purpose of the 'written description requirement is broader than to merely explain how to 'make and use'; the applicant must also convey with reasonable clarity to those skilled in the art, that,... he or she was in possession of the invention...at the time the application was filed.

Vas-Cath, 935 F.2d at 1563-1564. Additional guidance about compliance with the written description requirement is provided below:

> One shows that one is 'in possession' of the invention by describing the invention, with all its claimed limitations, not that which makes it obvious. Lockwood, 107 F. 3d at 1565, 1572. The inventor can demonstrate possession by such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention.

Vas-Cath, 935 F.2d at 1563-1564. Determination of whether the written description requirement is satisfied is a question of fact:

> The issue of whether a patent specification adequately describes the subject matter claimed is a question of fact.

Vas-Cath, 935 F.2d 1555, 1563. Therefore, a fact-based analysis of the specification of the present application is needed to evaluate the sufficiency of the written description and determine if the specification, via words, examples, structures, etc., reasonably conveys to one of ordinary skill in the art the inventor's possession of the claimed invention at the time parent application no. 08/692,922 was filed.

First, Applicants note the following statement of the Examiner in the present Office Action:

> [T]he recitation of "allelic variant" is directed to a specific molecule for which the instant specification fails to describe the molecule in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time application was filed, had possession of the claimed invention.

is erroneous. Rather than merely relating the term "allelic variant" to a single specific molecule, the disclosure of parent application no. 08/692,922 variously and fully characterizes allelic variants using words, structures, and examples. The disclosure of parent application no. 08/692,922 demonstrates the inventor had possession of a DNA sequence encoding a porcine leptin polypeptide and also had possession of allelic variants of the DNA sequence encoding the porcine leptin polypeptide at the time parent application no. 08/692,922 was filed.

Various descriptive means, such as words, examples, and structures, employed in parent application no. 08/692,922 demonstrate to a person of ordinary skill in the art that Applicants had possession of allelic variants of the porcine leptin DNA at the time parent application no. 08/692,922 was filed. For example, parent application no. 08/692,922 discloses a DNA sequence of the porcine leptin polypeptide that is identified as SEQ ID NO:1. (See column 5, lines 12-14, of U.S. Patent No. 6,277,592 of Exhibit A). Next, parent application no. 08/692,922 uses words to describe an allelic variant of the porcine leptin DNA by stating the allelic variant or 'variant' is a DNA molecule that is substantially similar to the porcine leptin DNA sequence identified as SEQ ID NO:1. (See column 5, lines 12-14, of U.S. Patent No. 6,277,592 of Exhibit A). Parent application no. 08/692,922 further discloses that allelic variants of the porcine leptin DNA sequence may have any combination of deletions from, insertions in, or substitutions to SEQ ID NO:1, as long as the desired leptin activity is observed. (See column 5, lines 22-25, of U.S. Patent No. 6,277,592 of Exhibit A). Furthermore, parent application no. 08/692,922 discloses that allelic variants may exist as mutations of the porcine leptin DNA identified as SEQ ID NO:1 or SEQ ID NO:3.

The factual evidence presented above demonstrates that parent application no. 08/692,922 describes allelic variants of the porcine leptin DNA in terms of variations of the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3, where the variations may include any combination of deletions, insertions or substitutions to the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3, with the caveat that the variations are substantially similar to the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3. This composite description of the allelic variants of the porcine leptin DNA is believed to reasonably provide an adequate written description of allelic variants of the porcine leptin DNA sequence, as defined in claims 1-5 of the above-identified application. Additionally, this composite description of the allelic variants of the porcine leptin DNA in parent application no. 08/692,922 demonstrates that parent application no. 08/692,922 reasonably convey to a person of ordinary skill in the art that Applicants had possession of allelic variants of the porcine leptin DNA when parent application no. 08/692,922 was filed. Consequently, the disclosure in parent application no. 08/692,922 is adequate to fulfill the written description

requirement of the first paragraph of §112 with the respect to allelic variants, as defined in claims 1-5 of the above-identified application.

Next, Applicants note the words used to describe "allelic variant" in parent application no. 08/692,922 are consistent with the words used by a person of ordinary skill in the art to describe "allelic variant." For example, the word "allele," which is the linguistic basis for the term "allelic," is defined as follows:

> "any one or more of alternative forms of a given gene. They [allele] occur by mutation, where deletions, substitutions or insertions have altered the original specific sequence of nucleotides."

See page 13 of Language of Biotechnology, A Dictionary of Terms (attached as Exhibit B of this Amendment). The term "variant" is defined as "a strain which differs from other related strains in a specified or specified way." See page 819 of the Dictionary of Genetics (6th Edition) (attached as Exhibit C of this Amendment). Thus, the description of allelic variants of the porcine leptin DNA in parent application no. 08/692,922 in terms of variations of the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3, where the variations may include any combination of deletions, insertions or substitutions to the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3, with the caveat that the variations are substantially similar to the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3, is entirely consistent with the "allele" linguistic basis for the term "allelic" and with the "variant" term, as defined in Exhibits B and C, respectively.

As noted, parent application no. 08/692,922 discloses a specific sequence of nucleotides that encode the porcine leptin polypeptide identified as SEQ ID NO:1. In addition, parent application no. 08/692,922 specifies allelic variants of the porcine leptin DNA in terms of variations of the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3, where the variations may include any combination of deletions, insertions or substitutions to the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3, with the caveat that the variations are substantially similar to the DNA sequence identified as SEQ ID NO:1 or SEQ ID NO:3. Thus, parent application no. 08/692,922 describes allelic variants of the porcine leptin DNA using terminology that is consistent with terminology used by one of ordinary skill in the art. Consequently, a person of ordinary skill

in the art would know the inventor had possession of allelic variants of porcine leptin DNA at the time parent application no. 08/692,922 was filed by simply reading the disclosure of parent application no. 08/692,922.

The disclosure of parent application no. 08/692,922 (see column 1, lines 52-58 of the Bidwell patent) states that allelic variants of SEQ ID NO:1 are within the scope of the present invention since parent application no. 08/692,922 discloses that allelic variants of SEQ ID NO:1 could produce altered expressions of the leptin gene when different levels of fat deposition were observed in cattle. See column 1, line 51; column 4, lines 5-9; and column 9, line 43, to column 10, line 6, of U.S. Patent No. 6,277,592 of Exhibit A. Identification of other allelic variants that fall within scope of SEQ ID NO:1 may occur using Restriction Fragment Length Polymorphism (RFLP) techniques. (see column 3, lines 7-20, of U.S. Patent No. 6,277,592 of Exhibit A) or hybridization techniques (see column 6, lines 37-63, and Example I of U.S. Patent No. 6,277,592 of Exhibit A).

Next, we consider the Examiner's allegation that the detailed description of the above-identified application is not adequate because "the structure of an 'allelic variant' cannot be predicted on the basis of the nucleotide sequence of SEQ ID NO:1. since there is no disclosure of where the variation occurs in the sequence of SEQ ID NO:1." This statement of the Examiner is an erroneous statement of the law pertaining to the written description requirement of the first paragraph of §112. As noted above, the test for meeting the written description requirement is whether a person skilled in the art is reasonably able to recognize the inventor possessed what is being claimed at the time of filing. The test for meeting the written description requirement is <u>not</u>, despite the Examiner's allegation, whether a person skilled in the art is reasonably able to recognize where a variation occurs in the sequence of SEQ ID NO:1.

Furthermore, the structure of other allelic variants within the scope of the disclosure in parent application no. 08/692,922 that are not specifically identified as SEQ ID NO:1 may be predicted on the basis of the nucleotide sequence of SEQ ID NO:1 reported in parent application no. 08/692,922. As disclosed in parent application no. 08/692,922, the disclosed genetic sequences and oligonucleotides allow for identification of other allelic variants of porcine leptin DNA that are well

within the scope of the invention of parent application no. 08/692,922. See column 6, lines 7-11, of U.S. Patent No. 6,277,592 of Exhibit A). Parent application no. 08/692,922 further discloses that identification of such allelic variants of the porcine leptin DNA may occur using RFLP techniques (see column 3, lines 7-20, of U.S. Patent No. 6,277,592 of Exhibit A) or may occur using a portion or the entire DNA sequence of SEQ ID NO:1 as a probe that hybridizes to a sample containing porcine leptin DNA (see column 6, lines 27-64, and Example I of U.S. Patent No. 6,277,592 of Exhibit A) followed by DNA sequencing or RFLP analysis. DNA sequencing or RFLP analysis are common routine techniques known to, and capable of being practiced by, persons of ordinary skill in the art without undue experimentation. Therefore, identification of other allelic variants may be predicted by a person of ordinary skill in the art on the basis of the nucleotide sequence of SEQ ID NO:1 that is disclosed in parent application no. 08/692,922.

Indeed, the published scientific literature confirms that allelic variants of SEQ ID NO:1 or SEQ ID NO:3 that are not specifically identified in parent application no. 08/692,922 nevertheless fall within the scope of the written description provided in parent application no. 08/692,922. See Y.M. Kennes, B.D. Murphy, F. Pothier and M.-F Palin, Characterization of Swine *Leptin* (*Lep*) Polymorphisms and Their Association with Production Traits (2001) that is attached as Exhibit E of this Amendment and is hereinafter referred to as the "Kennes publication." The Kennes publication discloses that four polymorphisms in the swine *leptin* (*LEP*) gene were characterized and evaluated for association with economically important production traits in pigs using information contained in parent application no. 08/692,922. (See the first paragraph of the Kennes publication). Furthermore, the Kennes publication demonstrates one skilled in the art who follows the techniques and protocols disclosed in parent application no. 08/692,922 would have no difficulty identifying allelic variants of SEQ ID NO:1 or SEQ ID NO:3 that fall within the scope of the written description provided in parent application no. 08/692,922.

Additionally, the Kennes publication publicly demonstrates that a person of ordinary skill in the art, by relying on the specification disclosure of parent application no. 08/692,922, could predict and identify allelic variants of SEQ ID NO:1 or SEQ ID NO:3 that fall within the scope of

the written description provided in parent application no. 08/692,922. Consequently, the Kennes publication demonstrates that a person of ordinary skill in the art would understand the written description provided in parent application no. 08/692,922 discloses allelic variants of the porcine leptin DNA, such as allelic variants of SEQ ID NO:1 or SEQ ID NO:3. Applicants also note the Kennes publication directly contradicts the Examiner's allegation that the structure of an "allelic variant" cannot be predicted by a person of ordinary skill in the art based on the written description provided in parent application no. 08/692,922.

The Examiner's statement about the written description for the term "allelic variants" allegedly being inadequate "since there is no disclosure of where the variation occurs in the sequence of SEQ ID NO:1" is also improper, since an adequate written description does not require disclosure of where the variation occurs in the sequence of SEQ ID NO:1. In this regard, Vas-Cath states:

> Furthermore, the written description requirement does not require identical descriptions of claimed compounds, but it requires enough disclosure in the patent to show one of ordinary skill in the art that the inventor 'invented' what is claimed. Vas-Cath, 935 F.2d at 1563.
>
> 'Although the exact terms need not be used in *haec verba*, see Eiselstein v. Frank 52 F. 3d 1035, 1038, 34 U.S.P.Q. 2D (BNA) 1467, 1470 (Fed Cir. 1995) ('The prior application need not describe the claimed subject matter in exactly the same terms as used in the claims ....'), the specification must contain an equivalent description of the claimed subject matter.' Lockwood, 107F. 3d at 1572.
>
> 'The invention claimed in the later application does not have to be described in the prior application in *ipsis verbis* in order to satisfy the description requirement of section 112. . . .and one skilled in the art, following the teaching of the prior application must be able to produce the subject matter of the later claims.' Ralston, 772 F. 2d at 1570.

Therefore, as stated in Vas-Cath, the written description does not require an identical description of the claimed allelic variant, despite the Examiner's contention to the contrary. Instead, the written description may contain "an equivalent disclosure." Parent application no. 08/692,922 does contain such"an equivalent disclosure," as documented by the various discussion provided above, such as

the discussion about the Kennes publication. Therefore, the disclosure of parent application no. 08/692,922 supplies an adequate written description for the invention defined in claims 1-5 of the above-identified application.

Furthermore, as detailed in Ralston, if one skilled in the art can follow the teaching of an application to produce the subject matter of the claims, the written description requirement is met. The Kennes publication demonstrates that one skilled in the art following the disclosure of parent application no. 08/692,922 is able to produce and identify allelic variants of SEQ ID NO:1 or SEQ ID NO:3 that fall within the scope of claims 1-5 of the above-identified application. Therefore, for this additional reason, the disclosure of parent application no. 08/692,922 meets the written description requirement with respect to claims 1-5 of the above-identified application.

Next, Applicants note the Examiner's statement: "The claims are directed to a species of nucleic acid, the structure of which cannot be determined or predicted from the disclosed nucleic acid sequence . . . ." is erroneous. This statement of the Examiner is erroneous since the structure of various allelic variants of porcine leptin DNA were determined and predicted by others, as described in the Kennes publication, using the disclosure of parent application no. 08/692,922. Furthermore, Applicants note the Examiner's allegation "and the specification does not evidence isolation or conception of the structure of an 'allelic variant'" is improper and is not pertinent to the adequacy of the written description with regard to claims 1-5 of the present application. Instead, the test for an adequate written description is whether the specification conveys to a person of ordinary skill in the art that the inventor had possession of invention at the time the application was filed and is not whether the specification describes the structure of a particular allelic variant.

Applicants have demonstrated possession of allelic variants that fall within the scope of the present invention by (1) providing a specific structure of the porcine leptin DNA (SEQ ID NO:1), (2) describing an allelic variant of porcine leptin DNA in terms that are used by a person of ordinary skill in the art to describe allelic variants, (3) providing specific examples of isolating allelic variants of porcine leptin DNA from a variety of sources and (4) highlighting the Kennes publication that demonstrates how a skilled artisan followed the teaching of parent application no. 08/692,922. to identify additional allelic variants that are within the scope of the present invention, as defined in

claims 1-5. Therefore, Applicants have conveyed with reasonable clarity to those skilled in the art that, as of the filing date of parent application no. 08/692,922, Applicants were in possession of the present invention, as defined in claims 1-5 of the above-identified application. (See Vas-Cath at page 1116).

Applicants also respectfully disagree with the Examiner's interpretation of Fiers v Revel and with the Examiner's allegation that "the specific molecular structure is required" to meet the written description requirement. The Examiner's statement and interpretation of Fiers is incorrect because Fiers is concerned with determining priority based on conception of an invention. As stated above, the test for compliance with the written description requirement is not concerned with conception of the structure of particular allelic variants by the inventor(s). Rather with regard to the invention defined in claims 1-5 of the present application, the test for written description compliance is whether the specification disclosure conveys to one of ordinary skill in the art that the inventor was in possession of the invention defined in claims 1-5 when parent application no. 08/692,922 was filed. Indeed, as explained at length above, Applicants have demonstrated possession of "allelic variants", as defined in claims 1-5 of the above-identified application, by describing the concept of the claimed allelic variants in terms that are adequate to allow one ordinary skill in the art to recognize that the inventor(s) had possession of "allelic variants", as defined in claims 1-5 of the above-identified application, when parent application no. 08/692,922 was filed. As demonstrated by the discussion with respect to the Kennes publication, parent application no. 08/692,922 reasonably conveys to one of ordinary skill in the art that the inventor had possession of allelic variants of porcine leptin DNA represented by SEQ ID NO:1 or SEQ ID NO:3 that are well within the scope of the present invention. Fiers, 984 F. 2d 1170.

The Examiner alleges that "one cannot describe what one has not conceived. See Fiddes v. Baird . . . ." However, the Examiner's interpretation and application of Fiddes v. Baird to the facts of the Examiner's written description rejection of claims 1-5 of the present application are improper. Fiddes v. Baird involved an interference pertaining to inventions claiming mammalian fibroblast growth factor. Baird's claimed invention was directed to mammalian FGF using a disclosure that set forth the amino acid sequence for bovine pituitary FGF and a theoretical DNA

sequence that allegedly would encode bovine pituitary FGF. The Baird patent did not disclose any naturally-occurring gene encoding bovine pituitary FGF, any other amino acid sequence for any other mammalian FGF, or any naturally occurring gene encoding any other mammalian FGF. Consequently, in Fiddes v. Baird, the Board of Patent Appeals and Interferences decided Baird was not in possession of the naturally occurring gene for bovine pituitary FGF or any other gene for any mammalian FGF at the time the Baird application was filed.

Fiddes v Baird contrasts with the facts of the present rejection of claims 1-5 in several important ways. For example, in contrast to the Baird application, parent application no. 08/692,922 contains an adequate written description of DNA sequences (porcine leptin gene) encoding the porcine leptin polypeptide (SEQ ID NO:1), as defined via the allelic variant terminology employed in claims 1-5 of the above-identified application. Claims 1-5 define, in part, allelic variants of porcine leptin DNA that fall within the scope of the disclosure of parent application no. 08/692,922; contrasting with the Baird application, claims 1-5 do not define allelic variants of DNA sequences encoding leptin outside of the porcine genus.

Furthermore, Applicants, via the Kennes publication, have demonstrated that parent application no. 08/692,922 allows a person skilled in the art to produce and identify allelic variants of the porcine leptin DNA represented by SEQ ID NO:1 or SEQ ID NO:3 that fall within the scope of the disclosure of parent application no. 08/692,922 and within the scope of claims 1-5 of the present application. Indeed, using the techniques and protocols set forth in parent application no. 08/692,922, the Kennes publication structurally identifies allelic variants of the porcine leptin DNA represented by SEQ ID NO:1 or SEQ ID NO:3 that fall within the disclosure of parent application no. 08/692,922 and within the scope of claims 1-5 of the present application. In addition, no evidence of any undue experimentation using the techniques disclosed in parent application no. 08/692,922 during identification of the allelic variants of porcine leptin was reported in the Kennes publication.

The foregoing comments demonstrate that Applicants were in possession of allelic variants of the porcine leptin DNA represented by SEQ ID NO:1 or SEQ ID NO:3 at the time parent application no. 08/692,922 was filed. Therefore, it is evident an adequate written description of the

allelic variant terminology employed in claims 1-5 of the above-identified application existed in parent application no. 08/692,922 at the time parent application no. 08/692,922 was filed. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 1-5 under the written description requirement of the first paragraph of 35 U.S.C. §112, and that claims 1-5 be allowed.

New Claims Added By Applicant

Applicant has added new claims 13-40. Support for new claims 13-40 is believed to exist throughout parent application no. 08/692,922, such as at column 3, lines 11-20; column 5, lines 12-25; column 6, lines 28-44; column 6, lines 54-59; and Examples I, II and III. New claims 13-40 do not add any new matter to the above-identified application. Applicants respectfully request consideration and allowance of new claims 13-40.

CONCLUSION

Claims 1-5 and 13-40 are believed allowable. Consequently, reconsideration and allowance of claims 1-5 is respectfully requested. Furthermore, consideration and allowance of new claims 13-40 is respectfully requested. The Examiner is invited to contact Applicants' below-named attorney, Philip F. Fox, as appropriate to facilitate allowance of the above-identified application.

Respectfully submitted,
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